that the asphalt oozed in that direction, and caused the plaintiffs' land to subside. It was admitted that the surface is of little value, for, owing to the constant movement, sinking is more or less frequent. The court held that the plaintiffs were entitled to recover. It took the position that since asphalt is a mineral — not water — the action would clearly lie for the violation of the natural right to support of land by adjoining land. It refused to consider the settled rule that no recovery may be had for the withdrawal of support of underground water, whether it be collected in a body, *Northeastern Ry. Co.* v. *Elliot*, 1 J. & H. 145, or dispersed through the soil, *Popplewell* v. *Hodkinson*, 4 Exch. 248, and evidently regarded those cases as anomalous. What the court would hold if the supporting substance had a density greater than water and less than asphalt does not appear, since they declined to discuss the question of degree. The defendant forcibly contended that the analogy here was more nearly that of water, because as supporting mediums both substances have the common property of instability. This view, broadly stated, looks not at the chemical composition of the stratum, but at its qualities of resistance. And, on principle, it would seem better to apply a test of this nature. 10 HARVARD LAW REVIEW, 183. Perplexing questions of degree are avoided by recognizing a general rule based solely upon the utility of the substance as a medium of support. If, then, the distinction between stable and unstable strata be sound, the mere fact that asphalt is a mineral — not water — is not conclusive. Moreover, in cases near the line local conditions may well be considered, as in *Hendricks* v. *Spring Valley Mining Co.*, 58 (Cal. 190 Cal., Sup. Ct.), where no action was allowed for removal of lateral support, because the adjoining lots were located chiefly for hydraulic mining purposes. So in the principal cases, since the chief value of the land was the asphalt deposit, the restrictive effect of the decision upon an important local occupation should have been regarded. On the whole, then, the court might well have reached an opposite result.

ACQUIESCENCE FOR DETECTION. — The owner of goods may give the most complete opportunities to a would-be burglar for the purpose of entrapping him — the act is none the less a burglary. But if he through an agent solicits the person suspected to commit the crime, there can be no criminality — though the felonious intent is present, the entry is not made *invito domino*. *Eggington's Case*, 2 Leach, 913. The only disputed point in this branch of the law is how far the owner can go in laying traps for the offender. In *State* v. *Abley*, 80 N. W. Rep. 225 (Iowa), a town marshal incited the defendant to commit a burglary, obtained a key of the premises from a clerk without the knowledge of the owner for the defendant to duplicate, and informed the clerk of his plan to entrap. The owner, warned by the town marshal, procured the arrest of the defendant as he was leaving with the stolen goods. The defendant was convicted of burglary. The court sustained the conviction, seeming to base its decision entirely on the fact that the owner remained absolutely passive, and the inference is that otherwise the result would have been different. Though this view has some support from the authorities, *Williams* v. *State*, 55 Ga. 391, yet the better view, and the one generally adopted is, that so long as the owner did not induce the original intent, but only provided for its discovery after it was formed, the criminality of

the act will not be affected. *Alexander* v. *State*, 12 Texas, 540 (Tex., Sup. Ct.). The argument that consent to the entry can be implied from the facilities afforded would seem to be clearly rebutted by a consideration of the object for which they were furnished. This is the view of the modern German authorities. Olhausen, Commentary on the German Penal Code, 880. There is no doubt about the correctness of the decision in the principal case. It can scarcely be contended that the town marshal was the agent of the owner, and at any rate the plan was conceived before there was any communication between them. A position which might have been taken by defendant is that the public should not punish, as an offence against itself, an act which was instigated by its own official. *Saunders* v. *People*, 38 Mich. 218. The short answer to this would seem to be that the official in thus acting cannot be considered the agent of the public, and therefore cannot bind it.

RIGHTS OF A POLICY HOLDER IN THE SURPLUS OF A LIFE INSURANCE COMPANY. — The decision of the New York Court of Appeals in the case of *Greff* v. *Equitable Life Assurance Society*, 54 N. E. Rep. 712, is a notable one, not because it is a novelty in the law, but by reason of the great interests involved. The defendant was a life insurance company with a capital stock of $100,000 and a surplus at the time the action was brought of over $43,000,000. Its charter provided that a general balance be struck at certain periods, and after deducting a sufficient amount to cover all outstanding risks and other obligations, that an equitable share of the surplus be credited to each policy holder. The plaintiff held a policy which provided that the holder should be entitled to participate in the distribution of the surplus of the company according to such methods as might be adopted by it for distribution; these methods were accepted and ratified by the holder. On the expiration of this policy the plaintiff sought to take with him a proportionate share of the accumulated surplus. The court held that by the terms of the policy the plaintiff was entitled to an equitable share of the distributable surplus only, had no claim upon that reserve fund which was designated by the name of surplus, and that the determination of what portion of the surplus should be distributed among the policy holders rested with the discretion of the directors, whose methods the plaintiff by his contract had ratified and accepted. As to the charter, while not admitting that it could govern the contract, the court said that it clearly gave the company authority to increase its reserve fund for the security of its policy holders and to meet contingent liabilities; and merely because such reserve fund was designated surplus, the plaintiff had no right to a share of it, but only to a share in an amount set apart by the directors.

This decision is clearly correct. Aside from the fact that the word "surplus" is commonly used in two different senses, reserve fund and distributable earnings, of which the latter meaning was the one employed both in the charter and the contract, there is the broader ground that a contract is to be interpreted in the light of the circumstances out of which it grew and which surrounded its adoption. *Reed* v. *Insurance Co.*, 95 U. S. 23. Clearly it is not only just, but essential from a business point of view, that an insurance company keep on hand a reserve fund to secure that stability which is necessary to its own existence and the proper indemnity of its policy holders. And any contract of insurance